

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed December 8, 2008. At the time of the Final Office Action, Claims 1, 2 and 5-23 were pending in this Application. Claims 1, 2 and 5-23 were rejected. Claims 1 and 14-16 have been amended to further define various features of Applicant's invention. Claims 3-4 were previously cancelled without prejudice or disclaimer. Applicant respectfully requests reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 112

Claims 1, 2 and 5-23 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant amends Claims 1 and 14-16 to overcome these rejections and respectfully request full allowance of Claims 1, 2 and 5-23 as amended.

Rejections under 35 U.S.C. §103

Claims 1-2, 5, 8-16 and 18-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,521,746 issued to Israel Elchonin Sand ("*Sand*") in view of U.S. Patent No. 6,678,250 issued to David A Grabelsky et al. ("*Grabelsky*").

Claim 17 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Sand* and *Grabelsky* in view of U.S. Patent No. 6,553,515 issued to Charles J. Gross et al. ("*Gross*").

Applicant respectfully traverses and submits the cited art combinations, even if proper, which Applicant does not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an

apparent reason to combine the known elements in the fashion claimed. *Id.* “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

The Examiner considers that the combination of *Sand* and *Grabelsky* renders all limitations of all independent claims obvious. Applicant respectfully disagrees, because *Grabelsky* teaches to determine transmission quality based on unidirectional packet counts, while the present invention determines transmission quality based on bidirectional packet counts.

Grabelsky teaches to compare the received packet count by a first gateway from a second gateway with the expected (or sent) number of packets from the second to the first gateway. *Grabelsky*, column 7, lines 45-56. Hereby the fractional packet loss from the second to the first gateway may be determined as a measurement of transmission quality. *Grabelsky*, column 7, lines 56-57. This is further explained as how well the first gateway “hears” the second gateway. *Grabelsky*, column 8, lines 2-5. *Grabelsky* is silent with respect to comparing a first enumeration of packets received by a first gateway from a second gateway with a second enumeration of packets received by the second gateway from the first gateway. This is naturally so, because the equilibrium condition of the enumeration of packets (RTF speech packets) transmitted between two VoIP endpoints in both directions is not disclosed or taught in *Grabelsky*, and it is this equilibrium condition that allows for no complicated and computationally intensive algorithms to be used.

The present independent claims require detecting, over a predetermined time period, an enumeration of the transmitted RTP speech packets from the first to the second VoIP endpoints as a first number, and an enumeration of the transmitted RTP speech packets from

the second to the first VoIP endpoints as a second number; and then arithmetically processing the first and second numbers, and outputting a value which is based on the arithmetical processing representing the (bidirectional) transmission quality. While the present independent claims require comparing a first packet counts from a first VoIP endpoint to a second VoIP endpoint with a second packet counts from the second VoIP endpoint to the first VoIP endpoint, *Grabelsky* only teaches counting packets received by a first gateway from a second gateway and compare that with the expected (or sent) number of packets from the second to the first gateway. *Grabelsky*, column 7, lines 45 to column 8, line 7. In other words, *Grabelsky* teaches to determine transmission quality based on unidirectional transmission. That is, counting packets from the second to the first gateway. To compare that with the packet counts from the first to the second gateway is not suggested or taught by *Grabelsky*. Contrary hereto, the present invention determines transmission quality bidirectional; namely arithmetically processing packet counts in both directions between two end points.

Since *Sand* and *Grabelsky* fail to teach or suggest detecting, over a predetermined time period, an enumeration of the transmitted RTP speech packets from the first to the second VoIP endpoints as a first number, and an enumeration of the transmitted RTP speech packets from the second to the first VoIP endpoints as a second number; and then arithmetically processing the first and second numbers, and outputting a value which is based on the arithmetical processing representing the transmission quality, it is respectfully requested that the rejection under 35 U.S.C. §103(a) is withdrawn. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §103(a), if necessary, and do not concede that the Examiner's proposed combinations are proper.

Allowable Subject Matter

Applicants appreciate Examiner's consideration and indication that Claims 6-7 and 22-23 would be allowable if written to overcome the rejections under 35 U.S.C. §112, second paragraph, as set forth in the Office Action and to include all of the limitations of the base claim and any intervening claims. However, for the reasons set out above, Applicant believes the Claims to be in condition for allowance and requests favorable action.

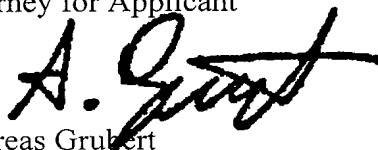
CONCLUSION

Applicant has made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicant respectfully requests reconsideration of the pending claims.

Applicant believes there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.322.2545.

Respectfully submitted,
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